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2012 JUN 14 PM 12: 55

FIRST GENERAL COUNSEL'S REPORT

CELA  
SENSITIVE

MUR: 6514  
DATE COMPLAINT FILED: 12/15/11  
DATE OF NOTIFICATION: 12/22/11  
LAST RESPONSE RECEIVED: 01/20/12  
DATE ACTIVATED: 03/16/12

EXPIRATION OF SOL: 11/01/16

COMPLAINANTS:

Campaign Legal Center and Democracy 21

RESPONDENTS:

Make Us Great Again, Inc. and Paul Kilgore, in  
his official capacity as Treasurer  
RickPerry.org, Inc. and Salvatore Purpura, in his  
official capacity as Treasurer

RELEVANT STATUTES  
AND REGULATIONS:

2 U.S.C. § 431(8)(A)(i)  
2 U.S.C. § 441a(a)  
2 U.S.C. § 441a(f)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint alleges that Make Us Great Again, Inc. and Paul Kilgore, in his official capacity as Treasurer ("MUGA"), an independent expenditure-only political committee, gave video footage to RickPerry.org, Inc. and Salvatore Purpura, in his official capacity as Treasurer (the "Committee"), that the Committee used in a television commercial. The Committee is the principal campaign committee of former presidential candidate Rick Perry. Citing Advisory Opinion 2010-11 (Commonsense Ten), the complaint asserts that such a contribution violates the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations

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1 because independent expenditure-only committees are prohibited from making contributions to  
2 candidates. The complaint also alleges that the contribution is excessive because the video  
3 footage likely cost more than \$2,500.<sup>1</sup>

4 MUGA denies that it gave video footage to the Committee and provides two supporting  
5 affidavits. MUGA asserts that it produced and paid for a television advertisement supporting  
6 Governor Perry, and that its ad was publicly distributed on its website and YouTube after it was  
7 broadcast. MUGA further contends it had no contact with the Perry campaign about either the  
8 ad or footage.

9 The Committee also denies that any employee or consultant of the Committee had any  
10 contact with MUGA. The Committee further contends that, although it did use in one of its ads  
11 some of the video footage contained in the MUGA advertisement, it did not receive it from  
12 MUGA as a gift or contribution. Rather, the Committee asserts, its employees found the footage  
13 independently on YouTube.<sup>2</sup>

14 As discussed below, there is no evidence to the contrary. Rather, the available evidence  
15 shows that the video footage was not a gift or other thing of value conveyed from MUGA to the  
16 Committee. Accordingly, we recommend that the Commission find no reason to believe that  
17 MUGA made an unlawful in-kind contribution in violation of 2 U.S.C. § 441a(a) or that the

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<sup>1</sup> The complaint does not allege that there was unlawful coordination between MUGA and the Committee, and based on the available facts, there is no record evidence to suggest that there was any coordination relating to the video footage at issue. See 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.21.

<sup>2</sup> Both respondents assert that the complaint is frivolous, warranting adverse action against the complainants. Although we conclude the complaint provides no reason to believe a violation occurred here, the complaint satisfies the Act and Commission requirements concerning the nature and specificity of allegations in a complaint and does not warrant a referral to the Department of Justice.

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Committee accepted an unlawful in-kind contribution in violation of 2 U.S.C. § 441a(f) and close the file.<sup>3</sup>

## II. FACTUAL AND LEGAL ANALYSIS

### A. Factual Background

MUGA registered as an independent expenditure-only committee with the Commission on July 28, 2011. MUGA's purpose was to support and promote Governor Perry's candidacy for President. Jason Miller Aff. ¶ 2.<sup>4</sup> In support of its purpose, MUGA paid camera crews to shoot footage of Governor Perry at public events, which was used in certain MUGA ads, including the ad at issue. Scott Rials Aff. ¶ 3.<sup>5</sup> *Id.* Jamestown Associates, Inc., a political consulting firm, obtained and created the footage for the MUGA ad at issue. Miller Aff. ¶¶ 1, 4. The 31-second MUGA ad from which video footage at issue was imported by the Committee is entitled "Conservative" and appears to have been distributed in early November 2011. *See* Ben Smith, *MUGA's Great-Looking Ad*, POLITICO, Nov. 3, 2011; Miller Aff. ¶ 5.

The ad of the Committee that incorporated the MUGA footage is entitled "Securing the American Dream (Marcus' [sic] Story)." The ad is two minutes, 45 seconds long and reportedly was distributed in late November 2011, around Thanksgiving. *See* Ben Smith, *Perry Ad Features Super PAC Footage*, POLITICO, Nov. 26, 2011 (attached to MUGA's Response). The footage at issue consists of a Governor Perry handshake, a Governor Perry headshot partially framed by an American flag, and a second headshot. *See id.* The footage runs for less than ten

<sup>3</sup> For purposes of our present analysis, we accept the premise of the complainant that a contribution by an independent expenditure-only committee such as MUGA would be improper or at least subject to other limitations or prohibitions. We need not resolve the question here, as there is no reason to believe a contribution occurred.

<sup>4</sup> Jason Miller attests that he is a partner in Jamestown Associates, Inc., a Republican political consulting firm, and that Jamestown was involved in producing the MUGA ad at issue.

<sup>5</sup> Scott Rials attests that he was the Executive Director of MUGA, and that Miller served as Communications Director.

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seconds. The respondents do not dispute that the Committee's ad contains video footage drawn from MUGA's ad. *See* Committee and MUGA Responses.

MUGA contends that its principals, vendors, and consultants were unaware that the Committee used the footage MUGA created until a journalist contacted MUGA after the Committee broadcast its ad. MUGA Response at 2; Miller Aff. ¶ 9. MUGA asserts further that every vendor or consultant to MUGA operated under strict rules not to have any communication with the Perry campaign, and that, in fact, no vendor or consultant had any such communication. Miller Aff. ¶¶ 11, 12, 14; Rials Aff. ¶¶ 7-9, 14.

The Committee, for its part, asserts that its advertisement was created in-house by Committee employees "without ANY consultation, coordination, or discussion with any other political entity, specifically [MUGA]." Committee Response at 1 (uppercase in original). The Committee claims that it obtained the video footage that is the subject of the complaint from YouTube, and that the footage was uploaded to the site by someone unknown to the Committee. *Id.* at 2.

#### **B. Legal Analysis**

There is not sufficient record evidence to support a finding that there is reason to believe that MUGA made an unlawful or excessive contribution to the Committee.

The complaint argues that MUGA's conveyance of the video footage to the Committee constituted an excessive or prohibited contribution because MUGA provided the footage either without charge or at less than the normal rate for such footage. Complaint ¶ 2; *see* 2 U.S.C. § 431(8)(A)(i). The complaint also cites Advisory Opinion 2010-11 (Commonsense Ten) for the proposition that an independent expenditure-only group is prohibited from making contributions,

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1 “whether direct, in-kind, or via coordinated communication, to federal candidates or  
2 committees.” Advisory Op. 2010-11 at 2-3.<sup>6</sup>

3 The complaint and attached sources conclude that MUGA gave video footage to the  
4 Committee because the Committee’s ad contained some of the same footage that aired in  
5 MUGA’s ad. The complaint, however, does not cite any particular facts in support of its  
6 conclusion that the Committee received the footage from MUGA. And we are aware of none.

7 Both MUGA and the Committee deny it, and MUGA provides two sworn affidavits in  
8 support. MUGA points out that the footage was made available on its website and publicly  
9 posted on YouTube, and the Committee contends it independently obtained the footage from  
10 YouTube. No available information suggests otherwise.

11 Therefore, we recommend that the Commission find no reason to believe that MUGA  
12 violated 2 U.S.C. § 441a(a) by making an unlawful contribution, and that the Committee violated  
13 2 U.S.C. § 441a(f) by accepting an unlawful contribution. Finally, we recommend that the  
14 Commission close the file.

### 15 **III. RECOMMENDATIONS**

- 16 1. Find no reason to believe that Make Us Great Again, Inc. and Paul Kilgore, in his  
17 official capacity as Treasurer, violated 2 U.S.C. § 441a(a).  
18
- 19 2. Find no reason to believe that RickPerry.org and Salvatore Purpura, in his official  
20 capacity as Treasurer, violated 2 U.S.C. § 441a(f).  
21
- 22 3. Approve the attached Factual and Legal Analyses.  
23
- 24 4. Approve the appropriate letters.

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<sup>6</sup> An independent expenditure-only committee can make contributions to federal candidates if the committee maintains a separate bank account subject to the statutory source and amount limits. *See FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account* (Oct. 5, 2011). We do not know whether MUGA maintains such a separate contribution account.

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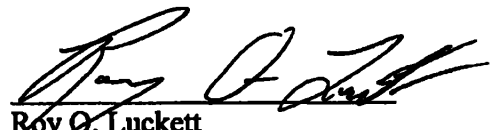
5. Close the File.

Anthony Herman  
General Counsel

6/14/12  
Date

BY:

  
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